



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 15 2016

George Nault

Bouse, AZ 85344

RE: MUR 6624

Dear Mr. Nault:

This is in reference to the complaint you filed with the Federal Election Commission ("Commission") on August 7, 2012, concerning Ron Gould, Gould for Congress and Janice Gould in her official capacity as treasurer ("Gould for Congress"), and the Committee to Elect Ron Gould and Janice Gould in her official capacity as treasurer ("State Committee").

The Commission was equally divided on whether to find reason to believe that Ron Gould, Gould for Congress, and the State Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d). A Statement of Reasons further explaining the basis for the Commission's decision will follow. The Commission found that there was reason to believe that Gould for Congress violated 52 U.S.C. § 30104(b) by failing to properly report earmarked contributions. On April 6, 2016, a conciliation agreement with Gould for Congress was accepted by the Commission. Accordingly, the Commission closed the file in this matter on April 6, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the conciliation agreement with Gould for Congress is enclosed for your information, as well as the Factual & Legal Analysis that sets forth the basis for the Commission's determination in this matter.

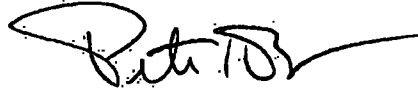
The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of the allegations relating to violations of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d). See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact

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George Nault
MUR 6624
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Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a stylized flourish extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosures

Conciliation Agreement (1)
Factual and Legal Analysis (1)

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RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2016 APR 12 PM 12:41

In the Matter of

Gould for Congress and Janice Gould
in her official capacity as treasurer

MUR 6624
OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was generated based on a complaint filed with the Federal Election Commission (the "Commission"). *See* 52 U.S.C. § 30109(a)(1). Based upon available information, the Commission found reason to believe that Gould for Congress and Janice Gould in her official capacity as treasurer ("Respondents") violated 52 U.S.C. § 30104(b).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Gould for Congress ("Committee") is the authorized campaign committee of Ron Gould, who was a candidate for the U.S. House of Representatives from Arizona's 4th congressional district in 2012. Janice Gould is the Committee's treasurer.

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2. The Act requires reporting of all contributions and expenditures.

52 U.S.C. § 30104(b). Commission regulations require that the intermediary or conduit of an earmarked contribution "report the original source and the recipient candidate or authorized committee." 11 C.F.R. §§ 102.8(a) and 110.6(b)(2), (c)(1)(iv)(A). When an earmarked contribution exceeds \$200, the conduit's report must contain the name and mailing address of the contributor, the contributor's occupation and name of employer, the date the contribution was received by the conduit as well as the amount and election designation, if any. *Id.*

3. The recipient of an earmarked contribution has reporting obligations if the earmarked contributions received from a single conduit exceed \$200 in an election cycle. The authorized committee must report on Schedule A the identity of each conduit or intermediary who forwards any earmarked contributions that, in the aggregate, exceed \$200 in a calendar year; the total amount of earmarked contributions received from the conduit and the date of receipt. 11 C.F.R. § 110.6(c)(2); *see* 52 U.S.C. § 30101a(a)(8). The recipient committee must also itemize on Schedule A, each original contributor whose total contributions to the committee aggregate over \$200 per election, including the full name, mailing address, occupation and employer of the contributors, the amount earmarked and the date the conduit received the contribution. 11 C.F.R. § 110.6(c)(2), 11 C.F.R. § 104.3(a)(3) and (4).

4. Club for Growth PAC ("CFG PAC") is the separate segregated fund for Club for Growth, a 527 organization, is registered with the Commission as a qualified nonparty committee (unauthorized), and files regular disclosure reports with the Commission. During the 2012 primary election, CFG PAC disclosed receiving 876 contributions totaling \$162,098 between May 3, 2012, and August 30, 2012, that were earmarked for Gould for Congress. CFG PAC provided, on Schedule A of its relevant FEC Form 3 filings (Report of Receipts and

Disbursements), contributor information for each individual earmarked contribution that exceeded \$200, and noted in the memo entry field for each contribution that it was earmarked for Gould.

5. The Committee reported the contributions it received through CFG PAC as "bundled" contributions by disclosing the receipt of \$155,414 in contributions on FEC Form 3L reports (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) and identifying CFG PAC as the forwarding "lobbyist/registrant." The Committee also itemized on Schedule A of the relevant FEC Form 3 filings, the individual contributors who gave CFG PAC contributions earmarked for Gould in amounts that exceeded \$200. Those itemized contributions, however, did not contain any memo entries or reference CFG PAC in any way, and did not indicate the date on which the contribution was originally received by CFG PAC.

6. The Committee misreported the conduit contributions it received through CFG PAC. CFG PAC is not a Lobbyist/Registrant PAC and therefore the Committee reported the conduit information on the wrong form — FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) instead of FEC Form 3, Schedule A (Itemized Receipts). Also, although the Committee itemized on FEC Form 3, Schedule A, the earmarked contributions that it received through CFG PAC which exceeded \$200, those itemized contributions did not contain a memo entry noting that they were earmarked through CFG PAC and did not indicate the date on which CFG PAC originally received the contribution, as required. Thus, there was no indication on the face of the Committee's disclosure reports which of the individual contributions received by the committee were earmarked through CFG PAC.

7. In August 2012, the Commission's Reports Analysis Division instructed the Committee on the way to correct its reports, but the Committee did not amend its disclosure

reports at that time to properly report the earmarked contributions. By the end of January 2016, the Committee had filed a series of amended disclosure reports properly reporting the earmarked contributions.

8. Respondents contend that the violation was an inadvertent mistake that resulted from their lack of familiarity with the reporting requirements for earmarked contributions. Respondents also contend that, once they understood how to properly report earmarked contributions, the Committee acted expeditiously to amend the relevant reports. Further, the Commission has made no finding that the reporting violation in this matter was knowing and willful.

V. Respondents violated 52 U.S.C. § 30104(b) by failing to properly report earmarked contributions.

VI. 1. Respondents will pay a civil penalty of Five Thousand Five Hundred Dollars (\$5,500) to the Federal Election Commission pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from violating 52 U.S.C. § 30104(b).

3. Respondents will amend their disclosure reports for all relevant time periods to properly itemize the earmarked contributions received through CFG PAC.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

BY: Kathleen Guith
Kathleen Guith
Acting Associate General Counsel
for Enforcement

4/12/16
Date

FOR THE RESPONDENTS:

Janice Gould
(Name) Janice Gould
(Position) Treasurer

2/26/2016
Date

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gould for Congress and Janice Gould in MUR 6624
her official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by George Nault, alleging violations of the Federal Election Campaign Act, as amended (the "Act"), by Gould for Congress and Janice Gould in her official capacity as treasurer.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Arizona State Senator Ron Gould filed a Statement of Candidacy for the Republican primary race in the 4th Congressional District of Arizona on November 21, 2011, designated Gould for Congress as his exploratory committee, and named Janice Gould as its treasurer.¹

Club for Growth PAC ("CFG PAC") is the separate segregated fund for Club for Growth, a 527 organization, is registered with the Commission as a qualified nonparty committee (unauthorized), and files regular disclosure reports with the Commission.² During the 2012 primary election, CFG PAC disclosed receiving 876 contributions totaling \$162,098 between

¹ See Arizona State Legislature, Member Page at http://www.azleg.gov/MembersPage.asp?Member_ID=96&Legislature=49&Session_ID=87. Gould also filed a corresponding Statement of Organization for "Gould for Congress (exploratory)". These filings did not specify the state, district, office sought, and party affiliation of the federal office he was seeking. The Reports Analysis Division ("RAD") sent Gould a Request for Additional Information ("RFAI") requesting the information and Gould filed an amended Statement of Organization on December 30, 2011, specifying that he was running in the Republican primary in the 4th Congressional district of Arizona. See Letter from Chief of the Authorized Branch, FEC, to Ron Gould (Dec. 9, 2011); Ron Gould Amended Statement of Candidacy (Dec. 30, 2011).

² See CFG PAC, FEC Form 1, Statement of Organization (Apr. 13, 2009). CFG PAC is not registered as a lobbyist/registrant PAC.

May 3, 2012, and August 30, 2012, that were earmarked for Gould for Congress.³ CFG PAC provided, on Schedule A of its relevant FEC Form 3 filings (Report of Receipts and Disbursements), contributor information for each individual earmarked contribution that exceeded \$200, and noted in the memo entry field for each contribution that it was earmarked for Gould.⁴

Gould for Congress reported the contributions it received through CFG PAC as “bundled” contributions by disclosing the receipt of \$155,414 in contributions on FEC Form 3L reports (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) and identifying CFG PAC as the forwarding “lobbyist/registrant.”⁵ It also itemized on Schedule A of the relevant FEC Form 3 filings, the individual contributors who gave CFG PAC contributions earmarked for Gould in amounts that exceeded \$200.⁶ Those itemized contributions, however, did not contain any memo entries or reference CFG PAC in any way, and did not indicate the date on which the contribution was originally received by CFG PAC.

The Complaint alleges that Gould for Congress failed to disclose all of the required information regarding these contributions and omitted identifying “over 150” contributions as

³ See CFG PAC, 2012 June Monthly Report (June 20, 2012), 2012 July Monthly Report (Aug. 20, 2012), and 2012 Sept. Monthly Report (Sept. 19, 2012).

⁴ *Id.*; see, e.g., CFG PAC, 2012 June Monthly Report at 7 (June 20, 2012).

⁵ See FEC Form 3L: 2012 Mid-Year Report (July 16, 2012); Amended 2012 Mid-Year Reports (July 18, 2012 and Sept. 24, 2012); 2012 Pre-Primary Reports (Aug. 16, 2012; Amended 2012 Pre-Primary Reports (Sept. 24, 2012 and Oct. 11, 2012); and 2012 October Quarterly Report (Oct. 15, 2012) (collectively reporting the receipt of \$155,414 in “bundled” contributions from CFG PAC).

⁶ 141 of the earmarked contributions (totaling \$115,789) required itemization.

having been "earmarked" by Club for Growth with appropriate memo entries.⁷ The Complaint further alleges that Gould for Congress completely failed to report five individual contributions earmarked by CFG for Gould: \$750 from Robert Bartels (June 14, 2012), \$500 from Robert Battle (June 4, 2012), \$505 from Ed Ligon (June 4, 2012), \$250 from John Popp (dated June 13, 2012), and \$1,000 from Saul Rosenzweig (June 7, 2012).⁸

Gould for Congress denies misreporting the earmarked contributions, asserting that its FEC Form 3L reports contain a summary of the contributions and that information is "populated by FEC software entries" in the committee's disclosure reports.⁹ With regard to the five earmarked contributions allegedly omitted from the committee's reports, Respondents provide varying explanations. According to the Response, Gould for Congress omitted Bartel's \$750 contribution by mistake, it accidentally entered Popp's \$250 contribution as \$0, and it could not process the Battle, Ligon and Rosenzweig contributions because it did not have correct credit card information.¹⁰ Gould for Congress later contacted Ligon and Rosenzweig and obtained the necessary information to process their credit card contributions.¹¹ The committee, however,

⁷ Compl. at 3. *See* 2 U.S.C. § 434(i)(1); 11 C.F.R. § 104.22(b)(1). The Complaint interchangeably refers to the earmarked contributions as "bundled" contributions and "earmarked" contributions. The Response refers to these contributions as "bundled." Resp. at 1-2. As discussed further *infra*, though the contributions were disclosed as bundled contributions, they were actually earmarked contributions.

⁸ Compl. at 2-3. Without elaboration, the Complaint also states that "it is unclear" whether Gould for Congress properly attributed contributions between the primary and general elections. The Response does not address Complainant's assertion and there is no indication on the face of the Gould for Congress disclosure reports that the committee improperly attributed contributions between the primary and general elections. Therefore, the Commission is not pursuing this allegation.

⁹ Resp. at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.*

could not contact Battle, and it never processed his contribution.¹² Gould for Congress reported the contribution made by Popp on the 2012 Amended July Quarterly Report (Sept. 24, 2012) and the Bartels, Ligon, and Rosenzweig contributions on the 2012 Amended Pre-Primary Report (Oct. 11, 2012).

B. Analysis:

The Act requires political committees to report all contributions and expenditures.¹³ Commission regulations require that the intermediary or conduit of an earmarked contribution — here, CFG PAC — “report the original source and the recipient candidate or authorized committee.”¹⁴ When an earmarked contribution exceeds \$200, the conduit’s report must contain the name and mailing address of the contributor, the contributor’s occupation and name of employer, the date the contribution was received by the conduit as well as the amount and election designation, if any.¹⁵

Further, the recipient of an earmarked contribution — here, Gould for Congress — also has reporting obligations if the earmarked contributions received from a single conduit exceed \$200 in an election cycle.¹⁶ The authorized committee must report on Schedule A the identity¹⁷ of each conduit or intermediary who forwards any earmarked contributions that, in the aggregate,

¹² *Id.*

¹³ 52 U.S.C. § 30104(b).

¹⁴ 11 C.F.R. §§ 102.8(a) and 110.6(b)(2), (c)(1)(iv)(A).

¹⁵ *Id.*

¹⁶ See also 52 U.S.C. § 30101(8)(A)(i) (defining contribution) and 11 C.F.R. § 110.6(b)(1) (defining an earmarked contribution is one that contains a “designation, instruction, or encumbrance” that “results in all or any part of a contribution” being made to a “clearly identified candidate or the candidate’s authorized committee”).

¹⁷ See 52 U.S.C. § 30101(13) (identification means, in the case of an individual, the name, the mailing address, and the occupation of such individual, and the name of employer; in the case of any other person, the full name and address of such person). See also 11 C.F.R. § 100.12.

exceed \$200 in a calendar year; the total amount of earmarked contributions received from the conduit and the date of receipt.¹⁸ The recipient committee must also itemize on Schedule A, each original contributor whose total contributions to the committee aggregate over \$200 per election, including the full name, mailing address, occupation and employer of the contributors, the amount earmarked and the date the conduit received the contribution.¹⁹

Gould for Congress made two basic errors in reporting the conduit contributions it received through CFG PAC. First, it reported the conduit information on the wrong form — FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) instead of FEC Form 3, Schedule A (Itemized Receipts).²⁰ A committee is required to file contributions on FEC Form 3L when it receives bundled contributions from lobbyists/registrants and lobbyist/registrant PACs.²¹ CFG PAC, however, is not registered as a lobbyist/registrant PAC.

Second, although it appears that Gould for Congress itemized on FEC Form 3, Schedule A, the earmarked contributions that it received through CFG PAC which exceeded \$200, those itemized contributions did not contain a memo entry noting that they were earmarked through CFG PAC and did not indicate the date on which CFG PAC originally received the contribution,

¹⁸ 11 C.F.R. § 110.6(c)(2). *See* 52 U.S.C. § 30101a(a)(8) (providing that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit” to a candidate, “shall be treated as contributions from such person to such candidate.”).

¹⁹ 11 C.F.R. § 110.6(c)(2), 11 C.F.R. § 104.3(a)(3) and (4).

²⁰ *See* 52 U.S.C. § 30104(i); 11 C.F.R. § 104.22. Any political committee that is “established or controlled” by a lobbyist/registrant is known as a lobbyist/registrant PAC and must identify themselves as such on an FEC Form 1. 11 CFR § 102.2(a)(2), 104.22(c). A political committee is “established or controlled” by a lobbyist/registrant if it must be disclosed by a lobbyist/registrant to the Secretary of the Senate or the Clerk of the House of Representatives as being established or controlled by a lobbyist/registrant under the Lobbying Disclosure Act of 1995. *Id.* at 11 C.F.R. § 104.22(a)(3), (4)(i).

²¹ 52 U.S.C. § 30104(i)(1); 11 C.F.R. § 104.22(3).

as required.²² Thus, there was no indication on the face of the Gould for Congress committee's disclosure reports which of the individual contributions received by the committee were earmarked through CFG PAC. In order to identify which individual contributions Gould received through CFG PAC, one must review the CFG PAC disclosure reports and search for receipts with a memo entry indicating that the contribution was earmarked for Gould.

Further, although RAD instructed the committee on the way to correct its reports, Gould for Congress has never amended its disclosure reports to properly report the earmarked contributions.²³

Accordingly, there is reason to believe that Gould for Congress failed to properly report earmarked contributions in violation of 52 U.S.C. § 30104(b).

²² See *Campaign Guide for Congressional Candidates and Committee*, Appendix A at 125-6 (<http://www.fec.gov/pdf/candgui.pdf>) (demonstrating the proper disclosure of earmarked contributions).

²³ On August 31, 2013, the committee's RAD analyst gave the Committee's treasurer, Janice Gould, instructions on the proper way to report earmarked contributions. RAD Communication Log, Aug. 31, 2012. In response, the treasurer apparently stated that it "was going to take her a very long time" to comply with that advice and add the conduit entries, and ultimately she never did make the corrections. *Id.* Instead, the committee filed amendments to the previously filed (and unnecessary) FEC Form 3L reports on September 24, 2012 and October 11, 2012, and filed a new FEC Form 3L report, dated October 15, 2012; it appears that these filings merely disclosed the four additional contributions received through CFG PAC that were not included in its original filings. *See supra* p. 14.